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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,148	08/08/2003	Paul Steve Chirgott	A01418	3428

21898 7590 11/29/2004
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EXAMINER

KEEHAN, CHRISTOPHER M

ART UNIT PAPER NUMBER

1712

DATE MAILED: 11/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/637,148

Applicant(s)

CHIRGOTT, PAUL STEVE

Examiner

Christopher M. Keehan

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/7/04, 12/31/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kawai et al. (EP 1125983 A1). Kawai et al. disclose a polyethylene terephthalate (PET) resin composition comprising an amount of PET, and an amount of impact modifier comprising graft copolymers that 1) have a rubber-containing core portion at least partially grafted to a shell portion, 2) have a minimum concentration of rubber in the core portion greater than 85 weight percent, and 3) consist of a core portion obtained by enlarging the particle size of a rubber particle which has an average particle size of at most 0.1 μm (section 0035), and which comprises a butadiene (co)polymer obtained by the polymerization of (1) butadiene, aromatic vinyl copolymer or aromatic (meth)acrylate, (3) a vinyl monomer, and (4) a cross-linking agent, all present in amounts as claimed, respectively, and a shell portion obtained by polymerization of (1) an aromatic vinyl compound, (2) an alkyl (meth)acrylate, and (3) a vinyl monomer, all present in amounts as claimed (Abstract, sections 0006-0027).

Regarding claims 2 and 3, Kawai et al. disclose wherein the core portion is obtained by agglomeration and enlarging of the particle size of the rubber comprising the butadiene (co)polymer by using a water-soluble electrolyte and using an acid group-

containing latex comprising a copolymer of a (meth)acrylate and an unsaturated acid (section 0021).

Regarding claim 4, Kawai et al. disclose an aromatic vinyl compound (section 0012), an aromatic (meth)acrylate (section 0014), a vinyl monomer (sections 0016-0017), and a cross-linking agent (section 0018) as claimed, respectively.

Regarding claim 5, Kawai et al. disclose amounts as claimed (section 0042).

Regarding claim 6, Kawai et al. disclose a population of polymeric particles that fulfill the claim requirements. It is the examiner's position that the impact modifier as set forth in claim 1 can be divided such that any amount can be a population of polymeric particles, fulfilling section (a) of the claim. Further, it is the examiner's position that the forming of the impact modifier particles would inherently create particles that would fulfill section (d) of the claim.

Regarding claims 7 and 8, the same reasoning as set forth above for claims 1 and 6 also applies to claims 7 and 8, as the claimed subject matter is essentially the same, except for the limitation in claims 7 and 8 that the concentration of rubber in the core portion ranges from 20 to 85% by weight, more specifically from 30 to 80% by weight. Kawai et al. disclose that the rubber core can be made by swelling, which would appear to yield a rubber content of above at least 85%, and agglomerating the rubber core with a (meth)acrylate and unsaturated copolymer (section 0021), which would appear to yield a rubber content in the core that would at least included in applicant's claimed range, as the materials of Kawai et al. are the same as those used by applicant (claim 3), absent evidence to the contrary.

Regarding claims 9 and 10, the same reasoning as set forth above for claims 4 and 5, respectively, has been applied to claims 9 and 10, as the claimed subject matter is essentially the same.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher M. Keehan whose telephone number is (571) 272-1087. The examiner can normally be reached on Monday-Friday, from 6:30 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on 571-272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher Keehan

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Art Unit 1712
Cee

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